

PART 1900 - GENERAL

Subpart B - Adverse Decisions and Administrative Appeals

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Part 1900 - GENERAL

Subpart B - Adverse Decisions and Administrative Appeals

§1900.51 General.

(a) This subpart contains operating instructions to be used by the Farmers Home Administration (FmHA) personnel to ensure that full and complete consideration is given to affected members of the public when certain adverse program administrative decisions are being made. It also sets out the authority and procedures of the National Appeals Staff, which gives administrative appeals and further review of these decisions. The National Appeals Staff is an organization within FmHA which is independent from FmHA State and local officials, and from all other agency officials making program administrative decisions. The FmHA official heading the National Appeals Staff, the Director of Appeals, reports directly to the Administrator of FmHA.

(b) The provisions of this subpart apply to program administrative decisions concerning all loans, loan guarantees, and grants made by FmHA. These include farmer program loans, housing loans (both single- and multi-family), community and business program loans, and all grant programs administered by FmHA. Hearings for single family housing loans sold to the Rural Housing Trust 1987-1 will be conducted by the Trust's Master Servicer acting through its subservicer. The borrower has the right to a final review by the National Appeals Staff as defined in §1900.58 of this subpart except the State Director cannot be the initial review officer. The initial review will be conducted by the Trust's Master Servicer. The provisions of this part also apply to appeals from decisions by FmHA under Subpart C of Part 1951 of this chapter to initiate administrative offset. The provisions of this subpart do not apply to decisions involving Nonprogram (NP) applicants, borrowers, or property except denial of NP loan assistance involving the leaseback/buyback and homestead protection provisions of Subpart S of Part 1951 of this chapter. (Revised 11-12-93, SPECIAL PN.)

(c) The provisions of this subpart do not apply to any decisions made by FmHA other than those referred to in paragraph (b) of this section, nor to decisions made by organizations outside FmHA even when those decisions are used as a basis for decisions falling within paragraph (b) of this section. Examples of the first kind of decision are Freedom of Information Act decisions to release or deny the release of information sought by members of the public (appealable under 7 CFR Part 1), decisions to purchase or not to purchase goods and services from members of the public under the

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Federal contracting laws and regulations (which decisions are appealable to the Department's Board of Contract Appeals under 7 CFR Part 24), FmHA multi-family housing tenant appeals covered by the appeals provisions of 7 CFR Part 1944, suspension and debarment disputes falling within the scope of 7 CFR Part 1944, and salary and tax refund offsets. Examples of the second kind of decisions are decisions of the Federal Crop Insurance Corporation concerning claimed crop losses (which may determine whether the producer of the crop can or cannot qualify for an FmHA Emergency loan), decisions of the Soil Conservation Service on whether particular farmland is or is not "highly erodible" (which may determine whether an applicant is eligible for participation in FmHA loan programs), and decisions by State governmental construction standards-setting agencies (which may determine whether FmHA will finance certain houses).

(d) The provisions of the Administrative Procedure Act, 5 U.S.C. 551-559, as amended, are not applicable to proceedings under this subpart except for the requirements concerning public information. The Equal Access to Justice Act, 5 U.S.C. 504, as amended, does not apply to these proceedings.

(e) Assistance will not be discontinued pending the outcome of an administrative appeal of a complete or partial adverse action. For borrowers with farmer program loans, as defined in §1900.52 (e) of this subpart, releases for essential family living and farm operating expenses will not be terminated until the account has been accelerated.

(f) Administrative offsets initiated under Subpart C of Part 1951 of this chapter will not be stayed pending the hearing and any further review of the decision to initiate the offset. (Added 5-25-90, SPECIAL PN.)

§1900.52 Definitions.

(a) Appellant means an applicant for FmHA assistance or an FmHA borrower holder (only as to decisions involving the repurchase of the holder's interest), or grantee, either individual or organizational, that is directly and adversely affected by an administrative decision by FmHA. The appellant may also be an applicant for or a recipient of a loan guarantee. As provided in §1900.57 (m) of this subpart, there can be multiple appellants in certain cases.

(b) Appellee (in multi-party appeals only as provided in §1900.57 (m) of this subpart) means a borrower or applicant who was initially selected for leaseback/buyback or homestead protection under §1951.911 of Subpart S of Part 1951 of this chapter, when another nonselected applicant appeals the sale. (Revised 05-07-92, SPECIAL PN.)

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(c) Hearing, as used in this subpart is an informal proceeding at which an administrative appeal from an adverse decision is heard.

(d) Decision maker is the Agency official who actually makes the specific decision but not the official who serves in an advisory capacity in interpreting instructions, policies, or technical items, or who performs routine supervision. For example, if an Agency official reviews a preapplication from an organization and directs a subordinate to include specific items in Form AD-622, "Notice of Preapplication Review Action," the official is the decision maker. However, when the official or the designee serves only in an advisory capacity and is not significantly involved in the decision, the subordinate will be considered the decision maker. In cases where the County Committee made the specific decision, any designated member of the County Committee or the County Supervisor may represent the County Committee in appeals under this subpart.

(e) Farmer program loans, means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Individual Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST), loans and/or Rural housing loans for farm Service buildings (RHF).

(f) Hearing officer is the member of the National Appeals Staff who conducts the administrative appeal hearing and has the authority to uphold, reverse or modify the decisions of the decision maker. See Exhibit D of this subpart for the designations of the hearing officers.

(g) Review officer is the member of the National Appeals Staff or a State Director acting as review officer who has the authority to uphold, reverse or modify decisions of the decision maker. See Exhibit D of this subpart for the designations of review officers.

(h) Record means the Agency's file, papers filed by an appellant, audio tapes, written version of the transcript (if any) of a hearing, and decisions made by Agency.

(i) Official positions the terms County Supervisor and District Director may vary in a few geographical areas. These terms will also mean Assistant Area Loan Specialist and Area Loan Specialist, respectively.

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(j) "Directly and adversely affected" means having a request for Agency assistance denied in whole or in part of having Agency assistance reduced, cancelled or not reviewed.

(k) "Representative" means an attorney or other person authorized in writing by an appellant to act for the person in an administrative appeal. Representatives will be presumed to retain their authority to act for an appellant until the written authorization is revoked in writing.

(l) Interest credit. The terms "interest credit" and "interest credit assistance," as they relate to Single Family Housing (SFH), are interchangeable with the term "payment assistance." Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

(Added 10-27-95, SPECIAL PN.)

§1900.53 Adverse action procedures.

(a) The following actions must take place before adverse program administrative decisions are made. These steps are the responsibility of Agency program decision makers.

(1) All documentation and calculations necessary to the determination to initiate an adverse actions must be accurate, complete and included within the administrative file.

(2) The specific reason or reasons for an intended adverse action should be clearly explained to the applicant or borrower. Vague reasons should be avoided. For example, avoid "you lack repayment ability." Calculations and documentation which demonstrate the lack of repayment will be provided and explained to the borrower or applicant.

(3) All appellants are entitled to an opportunity for a separate informal meeting with a decision maker before the appeal process is begun. The decision maker must give the applicant or borrower notice of his or her right to this meeting at a time no later than 10 days after the decision to deny the application or to accelerate a borrower's loan or loans or otherwise to terminate assistance.

(4) When the person or organization officials attend a meeting with the decision maker and the meeting results in a resolution of the matter, the official will send the person or

organization a letter within 7 calendar days of the meeting, setting forth the conclusions reached. If the meeting does not result in a resolution of the matter, Exhibit B-2 of this subpart and Form RD 1900-1, "Request for Appeal of Adverse Action," will be sent within 7 calendar days of the meeting to notify the person or organization of their rights to an administrative appeal. If an applicant or borrower who request a meeting fails to agree to a time and place or to attend, the appellant is still entitled to a hearing.

(b) When an applicant or borrower who is also an applicant for Agency services wishes to contest an appraisal of property value (except for appraisals made in connection with farmer program primary and preservation loan servicing), the applicant or borrower must be advised that he or she must request review of the appraisal by the State Director of the Agency before the appeal. Exhibit B-3 of this subpart will be used to notify the appellant. If an applicant or borrower seeks such a review, the time for requesting an appeal will be extended until after the State Director has acted on the review request. The State Director will review each such request and, when in his or her sole discretion it is deemed appropriate, may send a representative to make an on-site review. If this does not result in a resolution of the matter, Exhibit B-4 of this subpart and Form RD 1900-1 will be sent to the appellants to notify them of their appeal rights. (Revised 04-30-92, SPECIAL PN.)

(c) Appraisals involving farmer program primary and preservation loan servicing may be appealed directly to the Area Supervisor, National Appeals Staff, without prior review by the State Director. The appellant bears the burden of showing why the appraisal is in error. The appellant may submit an independent appraisal at his/her cost, from a qualified appraiser in accordance with §1951.909(i) of subpart S of part 1951 of this chapter. The appraisal must conform to Agency appraisal regulations applicable to the loan program. If the two appraisal values vary by no more than five percent, the borrower must select which of the two appraisals he or she wants to use in considering the servicing request. The appraisal the borrower selects will be the final appraisal and there will be no appeal. Appraisals that have been negotiated in accordance with paragraph 1951.909(i) of subpart S of part 1951 of this chapter may not be appealed. The borrower, however, will have the opportunity to appeal issues other than appraisal issues after negotiation of the appraisal. (Added 04-30-92, SPECIAL PN.)

(d) If an applicant, guaranteed lender, a holder, borrower or grantee is directly and adversely affected by a decision covered by this subpart, the decision maker will inform that person or organization by letter of the decision within 10 calendar days of the decision. (Renumbered 04-30-92, SPECIAL PN.)

(1) Letters, as indicated in Exhibits B-1, B-2 and Form RD 1900-1 or Exhibit C of this subpart, as appropriate, will be used to notify the applicant, borrower or grantee. The notice will advise how to request an administrative appeal and to obtain the record.

(2) When a program administrative decision is required by a clear and objective statutory or regulatory reason listed in §1900.55 of this subpart as being nonappealable, the decision maker will notify the applicant or borrower of such reason and that the decision is not appealable by notice to the applicant or borrower given with Exhibit C of this subpart.

§1900.54 National Appeals Staff.

(a) The National Appeals Staff consists of a Director of Appeals, Area Supervisors, Hearing Officers, Review Officers, and such other subordinate officers as may from time to time be necessary to hear and determine administrative appeals from decisions made appealable under this subpart.

(b) Appeal hearings will ordinarily be face-to-face hearing, held in the State of the appellant's residence, except in the following circumstances:

(1) With the consent of the appellant, hearings may be held in a place outside his or her State of residence when more convenient to the appellant, the hearing officer and the program officials who must attend the hearing. (Revised 04-30-92, SPECIAL PN.)

(2) Appeals originating in Samoa, Guam, remote areas of Alaska, and the Western Pacific areas may be acted upon without a hearing when, in the discretion of the Area Supervisor, travel time and expense make such a hearing impracticable. In such cases, the Hearing Officer will allow a reasonable period of time for the appellant to examine or obtain copies of relevant documents and will make such other arrangements as are necessary to determine the appeal expeditiously and fairly. A telephone conference call may also be used as set forth in paragraph (b)(3).

(3) At the request of the appellant, the Hearing Officer, or the program officials who must appear at a hearing, the Area Supervisor may authorize use of a telephone conference call or calls to conduct a hearing. The Area Supervisor will solicit and consider the views of all parties before using this authority, and will not use it when any party other than the appellant shows that a face-to-face hearing is necessary to resolve issues of credibility or for other good reasons, or when the appellant, for any reason, prefers a face-to-face hearing.

§1900.55 Appealable and nonappealable decisions.

(a) Program administrative decisions of the FmHA that directly and adversely affect program applicants, borrowers or grantees are appealable to the National Appeals Staff under the provisions of this subpart. All matters concerning the application of the law and applicable regulations to the facts of the matter may be considered. The National Appeals Staff and its officers do not, however, have the authority to change or waive applicable laws or regulations. Program administrative decisions based on such clear and objective statutory or regulatory requirements are therefore not appealable. However, such decisions are reviewable and Exhibit C of this subpart will be used in these cases. Examples of nonappealable decisions include:

- (1) Denial of Section 504 grant to an applicant less than 62 years of age.
- (2) Denial of a loan and/or grant to an individual or organization in an ineligible area.
- (3) Denial of a loan and/or grant to a type of organization not identified as an eligible applicant by the regulations.
- (4) Denial of a loan because an application for an Emergency loan was not filed before a prescribed termination date.
- (5) Denial of loan because of confirmed income that is above FmHA published limits.
- (6) Interest credit reduction that is the result of a confirmed income increase.
- (7) A determination of ineligibility for Emergency loans based on confirmation or verification by the Agricultural Stabilization and

Conservation Service (ASCS) or the Federal Crop Insurance Corporation (FCIC) that the applicant did not have the required production losses of 30 percent or more.

(8) Denial of compensation for construction defects when it has been determined that the contractor is willing and able to correct the deficiencies.

(9) Requirements and conditions designated by law to be developed by agencies other than FmHA. They include, but are not limited to: Davis-Bacon wage rates; flood plain determination; archaeological and historical areas preservation requirements, and designation of areas that have been determined to be inhabited by endangered species.

(10) Applicable state development standards for construction and other development. An appeal may only be made when the appellant claims FmHA is misapplying the written standards.

(11) Interest rates as set forth in FmHA procedure, except denial of limited resource rates, or an application of an incorrect interest rate.

(12) A rent increase rejection when the borrower fails or refuses to apply for rental assistance according to Exhibit C of Subpart C of Part 1930 of this chapter.

(13) Denial of assistance (including a subordination request or transfer and assumption) because of a conviction under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance. "Controlled substance" is defined in Exhibit C of Subpart A of Part 1941 of this chapter (available in any FmHA office).
(Renumbered 11-12-93, SPECIAL PN.)

(14) State Director's refusal to request exception authority as provided for in various FmHA program regulations.
(Renumbered 11-12-93, SPECIAL PN.)

(15) Denial of assistance due to lack of funds or authority to guarantee. (Renumbered 11-12-93, SPECIAL PN.)

(16) Negotiated appraisals involving primary and preservation loan service programs for new applications. A new application

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is defined in §1951.906 of Subpart S of Part 1951 of this chapter. Refer to §1900.53 (c) of this subpart for borrower's negotiation rights. (Renumbered 11-12-93, SPECIAL PN.)

(17) The County Committee's random selection by lot of an applicant for the purchase of suitable farm inventory property. However, the elimination of an applicant for the purchase of suitable inventory property from the priority categories is appealable. (Renumbered 11-12-93, SPECIAL PN.)

(b) Appraisals of property value including chattels, may be appealed through the hearing and review process provided for in this subpart only after review by the State Director as provided in §1900.53 (b) of this subpart. Appraisals involving farmer program primary and preservation loan servicing may be appealed, as provided for in §1900.53 (c), without prior review by the State Director.
(Revised 04-30-92, SPECIAL PN.)

(c) In cases where denial of assistance is based upon both appealable and nonappealable actions, the denial of assistance is not appealable. Exhibit C of this subpart will be used in these cases and will include all reasons for the decision.

(d) Appeals from applicants for, or borrowers of, Farmer Programs loans or loans to Indian Tribes and Tribal corporations who are denied assistance based on reasons relating to highly erodible land, wetland, or converted wetland (see Exhibit M of Subpart G of Part 1940 of this chapter for applicable FmHA requirements) will be handled as follows: Appeals questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property or application to a property for the exemptions identified in paragraph 11 b and c of Exhibit M of Subpart G of Part 1940 of this chapter must be filed directly with the USDA Agency making the determination in accordance with its administrative appeal procedures. If the denial of assistance involves an adverse decision based on determinations made both by FmHA and another USDA Agency, the appeal will be handled by both agencies in two separate appeals which as much as possible, should be handled concurrently. See §12.12 of Subpart A of Part 12 of Subtitle A (Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter which is available in any FmHA office).

§1900.56 Appeal requests.

(a) When an applicant appeals a decision and requests a hearing, the appeal will be handled as follows:

(1) Upon receipt of the request, the Area Supervisor, National Appeals Staff will verify whether the appeal was submitted within the authorized period. If the appeal was not submitted within the authorized time period, appeal rights are terminated unless the delay of the appeal was beyond the appellant's control or for other good reasons as determined by the Area Supervisor.

(2) If possible, the borrower should submit a copy of the independent appraisal to the initial decision maker and the hearing officer prior to the appeal hearing. The appellant's case file including the FmHA appraisal will be made available to the appellant or his representative at the FmHA decision maker's office for 10 working days following the receipt of a request for appeal. If the appellant has made a request to inspect or to receive copies of FmHA material concerning the case including any FmHA appraisal, the material will be made available to the appellant or the appellant's representative at the FmHA decision maker's office as soon as possible, but no later than 10 working days following the receipt of the request for the material. A written request from the appellant will not be required. Requests for information of a confidential nature exempt from disclosure under §2015.204 of FmHA Instruction 2015-E, (available in any FmHA office) will be handled in accordance with that Instruction. An FmHA employee will insure that no material is destroyed or removed from the file.
(Revised 04-30-92, SPECIAL PN.)

(3) If, upon review of the file, the hearing officer determines that the decision will be reversed, he or she will notify all parties of the determination and of the actions to be taken. Otherwise, the hearing officer will arrange for a hearing to be held as soon as possible, but normally within 45 calendar days of the receipt of the request for a hearing.

(4) An appeal hearing as a result of a denial of a borrower's request for release of normal income security must be held within 20 days of such request unless the borrower agrees to a longer time.

(5) The hearing will be held at a location convenient to the appellant, decision maker, and hearing officer. The hearing must be held in the state of residence of the appellant unless the appellant agrees to another location. If no place can be agreed on, the hearing officer will select the location within the appellant's state of residence. The location of the hearing will normally be within 100 miles of the residence of the appellant.

(6) When the appellant or appellant's representative or counsel, without reasonable cause, fails to appear at the hearing, the appellant's appeal will be considered concluded. If the appellant's failure to appear is for reasons beyond the control of the appellant or a request for postponement is with reasonable cause, the hearing officer will reschedule the hearing at a time convenient to all interested parties, but usually not later than 15 calendar days after the initially scheduled date.

(7) At any time before the scheduled hearing, the appellant may waive the opportunity for a hearing and, instead, request that the hearing officer make a decision based on the file, any written statements or evidence the appellant may submit and any other information the hearing officer deems necessary.

(8) The hearing will ordinarily be based on the material before the decision maker at the time the decision was made and on the reasons for the adverse decision set out in the decision letter. If any changes of circumstances or other occurrences material to the decision arise after the appeal has been requested, the decision maker must immediately advise the hearing officer (or, if one has not been assigned, the area supervisor) and the appellant. The hearing officer or area supervisor will, in such event, delay the hearing, return the decisional file to the decision maker for reconsideration, or take such other action as is appropriate.

§1900.57 Hearing rules.

(a) The hearing will be an informal proceeding at which the appellant has the responsibility of showing why the initial decision should be modified or reversed. To do so the appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses (when appropriate, FmHA witnesses requested by the appellant will be made available at the hearing) and arguments in support of appellant's appeal, controvert evidence relied on by FmHA, and may question all witnesses. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings.

(b) The decision maker (or successor) or informed delegate (who must be one who participated in the decision making process) will be at the hearing and will present information if necessary. Any other witnesses or FmHA personnel the decision maker thinks necessary to support the initial decision will be at the hearing to present evidence.

(c) During the hearing, the hearing officer may request additional witnesses to appear or request further information if the hearing officer considers this necessary to reach a proper decision. Information presented by witnesses will be limited to denial issues only.

(d) Recording the hearing:

(1) The hearing officer will tape record hearings. With prior permission of the Area Supervisor, the hearing officer may arrange to also have the hearing recorded by some other means.

(i) Appellants may tape record the proceedings at their own expense. Appellants must state when the taping begins.

(ii) At the time the decision is rendered and upon request, the record will be made available to the appellant as set out in the hearing officer's decision letter. Also upon request, a transcript of the hearing will be provided for a fee approximately equal to the government's cost of having the transcript made. The appellant may request and receive a copy of the hearing tape at no cost. The appellant may also make their own arrangements, independent of FmHA, for a transcript of the hearing.

(2) File documents and other written materials used in the hearing will be included as part of the record.

(e) For good cause, the hearing officer will, at the request of any party to an appeal, continue the hearing to future time. The length of the continuance will be at the hearing officer's discretion.

(f) The decision of the hearing officer shall be based on facts presented at the hearing or in writing, rebuttal by appellant and decision maker of new evidence, additional information requested by the hearing officer, appropriate FmHA files, applicable statutes and regulations, and the hearing officer's general knowledge of FmHA program functions.

(g) If an appellant waives the opportunity for a hearing and the hearing officer reviews any information the appellant or decision maker has not previously reviewed, the parties to the appeal will be advised by the hearing officer of the additional information and be allowed an opportunity to review it and respond accordingly. Usually, the total time given the appellant or decision maker to review and respond to this additional information will not exceed 15 calendar days.

(h) The hearing officer will render a decision within 30 calendar days of the date set for the hearing, unless this would not allow sufficient time to consider the appellant's response to any additional information. For appeals involving farmer program primary loan servicing programs, a decision will be made within 45 days after the receipt of the appeal request.

(i) If the initial decision is reversed, the hearing officer will inform the appellant, original decision maker, the appropriate Assistant Administrator, and any other official servicing the account, by letter of the decision, the reason for it, and what action will be taken.

(j) If the initial decision is upheld or modified but not reversed, the hearing officer will inform the appellant by letter of the decision giving specific reasons, with a copy to the decision maker, the appropriate Assistant Administrator and any other official servicing the account. Normally the hearing officer's decision letter will be similar to FmHA Guide Letter 1900-B-1. For appeals involving the denial of farmer program primary loan servicing programs, the hearing officer's decision letter will be sent by certified mail to the appellant with a return receipt to the initial decision maker.

(k) If the appellant does not request in writing a review of the hearing officer's decision within the 30 calendar day period provided in the letter, the appeal will be considered concluded.

(l) For appeals involving Farmer Programs primary and preservation loan servicing, an appeal may include a request by the borrower for an independent appraisal of any property involved in the decision. On such request the hearing officer shall present the borrower with a list of at least three appraisers approved by the County Supervisor, from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the borrower. The results of such appraisal shall be considered in any final determination concerning the loan. A copy of any appraisal shall be provided to the borrower. If an independent appraisal is requested, the 45-day decision deadline referred to in paragraph (h) of this section is extended as necessary to allow completion of the appraisal.

§1900.57 (Con.)

(m) Multi-party hearings.

(1) Appeals arising out of County Committee selection for leaseback/buyback under §1951.911 (a)(2)(ii) of Subpart S of Part 1951 of this chapter will be conducted in multi-party hearings. All applicants considered by the County Committee, but denied leaseback/buyback, will be made appellants in the appeal. The successful applicant will be made an appellee to the appeal. Any applicant electing not to participate in the appeal waives the right to appeal the original decision.

(2) Appeals arising out of selection for homestead protection under §1951.911 (b) of Subpart S of Part 1951 of this chapter will be conducted in multi-party hearings to the extent that there is more than one applicant for homestead protection in connection with any parcel of property subject to homestead protection. All applicants considered for but denied homestead protection who appeal the selection will be made appellants in the appeal. Any applicant electing not to participate in the appeal waives the right to appeal the original decision.

(3) To comply with the Freedom of Information Act, the Privacy Act, and the rights of the appellants and appellee, multi-party appeal hearings will be conducted as consecutively scheduled individual hearings. At each part of the hearing, only the FmHA decision maker, the hearing officer, and appellant or appellee, as appropriate, will be present. Requests for transcripts and copies of the appeal hearing tape will be limited to only the part of the hearing at which the appellants or appellee was present, to protect the Privacy Act rights of all parties to the hearing. The hearing rules of §1900.57 (a) through (l) not inconsistent with this paragraph will otherwise govern multi-party hearings. (Renumbered 04-30-92, SPECIAL PN.)

(n) Farmer Programs inventory property appeals. All applicants who are not placed in that priority category, that the purchaser will be selected from, may appeal their exclusion from the priority category. All appeals will be concluded prior to the County Committee selecting the purchaser. (Revised 05-07-92, SPECIAL PN.)

§1900.58 Review rules.

If the appellant requests a review:

(a) The review officer may obtain a copy of the transcript of the hearing if one was arranged for by the appellant.

(b) The review officer will review the certified record, applicable law and regulations, any additional written information furnished by the appellant including appellant's comments on the transcript, and any additional information as the review officer deems necessary. However, if the review officer reviews any information the appellant has not previously reviewed, the appellant will be advised by the review officer of the additional information and be allowed an opportunity to review it and respond accordingly. Usually, the total time given the appellant to review and respond to this additional information will not exceed 15 calendar days. Normally, the review officer will render a decision within 45 calendar days of receipt of a review request from the appellant.

(c) The review officer's decision will be based on written facts presented for the review, the certified record, additional information requested by the review officer, appellant's or decision maker's written response to the additional information review by the review officer, applicable statutes and regulations, and the review officer's general knowledge of the FmHA program functions.

(d) The appellant will be informed of the final decision by letter. A copy will be sent to the decision maker, the hearing officer and any other official servicing the account.

If the State Director is the review officer, the appellant will be given further review rights to the Director of Appeals. The appellant will be notified as set forth in §1900.57 (j) of this subpart. For appeals involving farmer program primary loan servicing, the review officer's decision letter will be sent by certified mail to the appellant with a return receipt to the initial decision maker.

§1900.59 Effect of appeal decision.

(a) Effective date. When an appeal is concluded, the effective date of the action to be taken will be the date of the initial decision from which the appeal was taken. Foreclosure action will not be pursued until time of appeal has expired or the appeal is terminated or resolved. Regulations in effect on the effective date will govern the action. Any loan made as the result of an appeal will bear interest at the lower of the interest rates in effect for that type of loan on the date of actual loan approval or loan closing.

(b) Finality. A decision made when an appeal is concluded will be administratively final.

(c) Timeliness. Whenever an adverse decision concerning a loan or loan guarantee (except for RH, RRH, RCH, RHS, and LH loans and grants) is appealed and the hearing officer or review officer reverses or modifies the initial decision, the decision maker shall resume processing of the application and notify the applicant of this within 15 days after the decision maker is notified of the decision of the hearing or review officer. The decision maker will inform the applicant of any further information needed.

(d) Implementation. Except as noted in paragraph (c) of this section and §1900.61 of this subpart, the decision maker shall, upon having a case returned pursuant to the decision of a hearing officer, State Director or Director, National Appeals Staff, implement the appeal decision reversing the adverse decision within 60 days of receiving the decision. For the purpose of this section, "implementation" means the next step in a loan processing or loan servicing action, required by FmHA regulations, that would occur had no adverse decision been made and appeal filed. (Added 04-30-92, SPECIAL PN.)

§1900.60 Records.

Appeal record will be maintained in the applicant's or borrower's case folder.

§1900.61 Review of hearing officer's decision on request of the appropriate Assistant Administrator.

(a) In extraordinary circumstances, when the decision of a hearing officer is in conflict with applicable FmHA regulations or law or the decision will result in unauthorized assistance being granted to an appellant, the appropriate Assistant Administrator may request review of the decision of a hearing officer by the Director, National Appeals Staff.

(b) Review under this section may be requested only by the appropriate Assistant Administrator and any request may be made within 9 working days after receipt of the hearing officer's decision to the appellant and the decision maker. It is the responsibility of the decision maker and the State Director to insure that a request for review under this section is received by the Assistant Administrator in sufficient time to allow such a request to be forwarded to the National Appeals Staff by the Assistant Administrator within 9 working days stated above. Request by the Assistant Administrator shall be made to the Director, National Appeals Staff by telefax and a copy of the request must be mailed (or delivered) to the appellant. The request must explain why the decision falls within the standards specified in paragraph (a) of this section.

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§1900.61 (Con.)

(c) The Director, National Appeals Staff, upon receiving such a request, has three working days to determine if the request has merit. If the Director, National Appeals Staff, determines the request has merit, a new hearing will be required at which the appellant may offer rebuttal to the Agency's claim.

(d) If the Director, National Appeals Staff determines the request is unsubstantiated, the State Director and the appellant will be so notified and the decision of the hearing officer will be implemented without further delay.

§§1900.62 - 1900.99 [Reserved]

§1900.100 OMB control number.

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0129.

Attachments: Exhibits A [Reserved], B-1, B-2, B-3, B-4, C, and D.

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(Revision 1)

LETTER FOR NOTIFYING APPLICANTS, LENDERS, HOLDERS AND BORROWERS
OF ADVERSE DECISIONS WHERE THE DECISION IS APPEALABLE

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
(Insert Address)

Date

Dear _____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative [or legal counsel] with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with [this office] [the County Committee]. See attachment for your appeal rights. (Attach For RD 1900-1) (For guaranteed loans, except loss claims, the applicant and lender must jointly request a meeting and/or appeal)

If you do not wish a meeting and as outlined above, wish to appeal a request for a hearing must be sent to the Area Supervisor, National Appeals Staff

_____, postmarked no later than _____,
(address) (month)

_____.
(date)
(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers

compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)

(County Supervisor may sign for County Committee)

(Title)

LETTER FOR NOTIFYING APPLICANTS, LENDERS AND HOLDERS AND BORROWERS OF
UNFAVORABLE DECISION REACHED AT THE MEETING

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
(Insert Address)

Date

Dear _____:

We appreciated the opportunity to review the facts relative to [your application/request for FmHA services] [the assistance you are presently receiving]. We regret that our meeting with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights. (Attach Form RD 1900-1) (For guaranteed loans, except loss claims, the applicant and lender must jointly request an appeal.)

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff _____, postmarked no later than _____, _____
(address) (month) (date)
(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

LETTER FOR NOTIFYING APPLICANTS, LENDER, HOLDERS AND BORROWERS
OF ADVERSE DECISIONS WHERE THE DECISION INVOLVES AN
APPRAISAL (NOT TO BE USED IN CASES INVOLVING FARMER
PROGRAM PRIMARY OR PRESERVATION LOAN SERVICING ACTIONS)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
(Insert Address)

Date

Dear _____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the
specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative or legal counsel with you.

If you do not wish to have a meeting as provides above, you may contest the appraisal of the property value. In order to contest the appraisal you must first request review of the appraisal by the FmHA State Director. Your request for review by the State Director should be made through our office. You will be advised of the results of the State Director's review. If after the State Director's review you still disagree with the appraisal you may request a hearing. When you receive the results of the State Director's review you will be advised on how to ask for a hearing. Your request for review of the appraisal must be postmarked no later than _____,
_____ insert date 15 days from date of letter).

(month) (Date)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color,

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religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

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LETTER FOR NOTIFYING APPLICANTS, LENDERS, HOLDERS AND
BORROWERS OF UNFAVORABLE DECISION REACHED AFTER
STATE DIRECTOR REVIEW OF AN APPRAISAL
(NOT TO BE USED IN CASES INVOLVING FARMER PROGRAM
PRIMARY AND PRESERVATION LOAN SERVICING ACTIONS)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
(Insert Address)

Date

Dear _____:

At your request, we have reviewed the appraisal of the property you wish to purchase. We have determined that the value estimate of the property is both supportable and defensible (as required by FmHA regulations and appraisal industry standards) and, therefore, acceptable.

You have the right to appeal this decision. You must show why the appraisal is in error. You may submit an independent appraisal, at your expense, from a qualified appraiser who is a designated member of a national appraisal society or an equivalent organization requiring appraisal education, testing and experience. The appraisal must conform to Agency Appraisal regulations applicable to the loan program.

See attachment for your appeal rights. (Attach Form RD 1900-1)

A request for a hearing, if desired, must be sent to the Area Supervisor,
National Appeals Staff _____, postmarked no later
(address)

than _____, _____
(month) (date)
(insert date 30 days from date of letter)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (Provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(State Director)

(3-16-90) SPECIAL PN

LETTER FOR NOTIFYING APPLICANTS, LENDERS, HOLDERS, AND BORROWERS OF ADVERSE
DECISIONS WHEN PART OR ALL OF THE DECISION IS NOT APPEALABLE

[Not used in connection with decisions related to
Nonprogram applicants, borrowers, or property]

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Homes Administration
(Insert Address)

(Date)

Dear _____:

After careful consideration we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are cancelling/reducing the assistance you are presently receiving].

(Insert and number all of the specific reasons for the adverse action.
Examples of nonappealable reasons are listed in §1900.55 (a).)

If you have any questions about this action, we would like the opportunity to explain in detail why your request has not been approved, explain any possible alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative or counsel if you wish. Please call (telephone number) for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but FmHA decisions based on certain reasons are not appealable. We have determined that the reason(s) numbered _____ for the decision in this case make(s) the decision not appealable under FmHA regulations. You may, however, write the Area Supervisor, National Appeals Staff (insert address) for a review of the accuracy of our finding that the decision is not appealable, postmarked no later than _____ (insert date 30 days from date of letter).
(date)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public

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assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)

(County Supervisor may sign for County Committee)

(Title)

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HEARING/REVIEW OFFICER DESIGNATIONS

DECISION MAKER OR DECISION	HEARING OFFICER	REVIEW OFFICER
County Supervisor	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff
County Committee	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff
*District Director *State Program Chief *District Specialist	National Appeals Staff Hearing Officer	**State Director and/or Director, National Appeals Staff
*State Director *Regional Director	As appointed by Director, National Appeals Staff	Director, National Appeals Staff
Division Director or Assistant Administrator	As appointed by Director, National Appeals Staff	Director, National Appeals Staff
Assistant Administrator	As appointed by Director, National Appeals Staff	Director, National Appeals Staff
Deputy or Associate Administrator	As appointed by Director, National Appeals Staff	Director, National Appeals Staff

*Decision Maker for Rural Development Administration (RDA) cases for
Regional Office Operations.

**Review officer will be the Regional Director and/or the Director,
National Appeals Staff for RDA cases.

Notes:

1. District Director also means Assistant District Director or District Loan Specialist.
2. County Supervisor also means Assistant County Supervisor with loan approval authority.
3. The Director of the National Appeals Staff may designate a staff member to conduct a hearing or review. When the hearing/review is completed, the designee will send the complete case file, hearing notes, tape recordings, and a recommended decision to the Director for a final decision. The Director may, for individual cases, delegate final decision authority to a designee.
4. For decisions not directly covered above, advice should be sought from the Director of the National Appeals Staff.
5. An appellant may elect to have an appeal reviewed by the State Director, or the Director of the National Appeals Staff. The decision of the State Director will be subject to further review by the Director of the National Appeals Staff upon request of the appellant.

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